

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

OCT 04 2006

JAMES N. HATTEN, Clerk
By: *J.P. McKinney* Deputy Clerk

Charles and Nancy Windom.)
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)
 Plaintiffs.)
)
)
 v)
)
)
 The United States.)
)
)
 Defendant)

No. 06 CV 2376

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

ODE

COMPLAINT

**I.
NATURE OF THE CONTROVERSY**

1 This complaint asserts a civil claim for wrongful death under the Federal Torts Claims Act, 28 U S C. Section 2671 *et seq.*, seeking actual and compensatory damages against the United States arising from the negligence of federal employees at the U S Department of Labor and the Turner Jobs Corps Center, a program funded by and under the supervision of the U.S. Department of Labor, an agency of the U S Government.

**II.
JURISDICTION AND VENUE**

2 This Court has Jurisdiction over this case pursuant to 28 U S C Sections 1346 and 2674. Venue is proper in this judicial district pursuant to 28 U S C Section 1391 because it is the district in which the Plaintiffs and deceased resided at the time of his death.

III.
PARTIES

- 3 Plaintiffs Charles and Nancy Windom (hereinafter "Plaintiffs") are the parents of
the decedent Obadiah Windom, who at all times relevant to the events giving rise
to this action for wrongful death was an enrollee at the Turner Jobs Corps Center
in Albany, Georgia
- 4 Defendant United States, which at all times relevant to the events giving rise to
this action for wrongful death, acted through federal employees at the U S
Department of Labor (also referred herein as "DOL") and the Turner Jobs Corps
Center in Albany, Georgia (also referred herein as "the Center").

IV.
FACTUAL BACKGROUND

- 5 That Obadiah Windom suffered from a congenital heart defect which limited his
participation in physical activity subject to medical supervision
- 6 That Obadiah Windom was born on October 8, 1985, and died on October 6,
2004, at the age of 18 years, while participating in a recreational activity as an
enrollee at the Turner Jobs Corps Center in Albany, Georgia
- 7 That on or about September 29, 2004, Obadiah Windom was prescreened by
employees at the Turner Jobs Center for medical conditions to determine his
ability to safely participate in the Center's programs
- 8 That on September 29, 2004, Obadiah Windom reported in a document entitled,
"Report of Medical History", that he had a history of "heart trouble", that he had a
previous operation, that he had previously been hospitalized, and that he had
consulted or been treated by clinics and physicians within the last five years

- 9 That in a second document entitled, "Report of Medical Examination", which was also completed in part by Obadiah WIndom on September 29, 2004, a section entitled, "17 CLINICAL EVALUATION". solicited information to be completed by an examining physician on the evaluation of Obadiah WIndom's heart condition
- 10 That the section entitled "17 CLINICAL EVALUATION" was not completed and did not indicate that a physician had performed a clinical evaluation of Obadiah WIndom's heart condition
- 11 That the "Report of Medical Examination" also contained a section that solicited an examining physician to summarize and elaborate on all pertinent data relating to Obadiah WIndom's reporting of prior operations, hospitalization and physician treatment within the last five years
- 12 That the section of the "Report of Medical Examination", which solicited an examining physician to summarize and elaborate on Obadiah WIndom's reporting of prior operations, hospitalization, and physician treatment within the last five years. was not completed and did not indicate that the information was considered by a physician to assess Obadiah WIndom's medical condition and ability to safely participate in the Center's programs and activities
- 13 That on September 29, 2004, on the same day he reported on his heart condition and medical history, Obadiah WIndom completed a form entitled, "Recreation/Avocation-Plan".

- 14 That Obadiah Windom indicated in his "Recreation/Avocation-Plan" that he wanted to participate in aerobics, flag football and weight lifting, while enrolled at the Center.
- 15 That on October 6, 2004, at approximately 6.30 p m , Obadiah Windom collapsed after lifting weights in the gym at the Turner Jobs Corps Center
- 16 That on October 6, 2004, at approximately 8 30 p.m.. Obadiah Windom was pronounced dead at Phoebe Putney Memorial Hospital in Albany, Georgia
- 17 That a subsequent autopsy performed on Obadiah Windom attributed his death to "cardiomegaly associated with congenital atrioventricular valvular anomaly "

**V.
WRONGFUL DEATH CLAIM**

18. That at all times relevant giving raise to this civil action Obadiah Windom was an enrollee at the Turner Jobs Corps Center, a program funded and supervised by the U S Department of Labor, an agency of the United States
19. That Obadiah Windom's death was a direct result of his engagement in activities associated with his enrollment at the Turner Jobs Corps Center in Albany, Georgia.
20. That on or about February 23, 2005, the Plaintiffs received a "Notice of Decision" from the U S Department of Labor denying a claim for death benefits, which stated, "[t]he claim for compensation benefits is denied as the medical evidence does not demonstrate that Obadiah [Windom's] medical condition, and subsequent death on 10/06/04 were caused by his Job Corps activities, which is required for coverage under the Federal Employers' Compensation Act."

- 21 That on or about November 1, 2005, the Plaintiffs received a final determination from the U S Department of Labor affirming the denial of their claim for death benefits.
- 22 That the Plaintiffs have exhausted their administrative remedies before the U S Department of Labor, which denied any causation between Obadiah Windom's death and his participation in activities at the Turner Job Corps Center
- 23 That the United States through federal employees at the U.S. Department of Labor and the Turner Jobs Corps Center owed Obadiah Windom a duty of care established by DOL policies and procedures to evaluate his heart condition prior to his engagement and participation in the Center's programs and activities
- 24 That at all time relevant to the events giving raise to this civil action. the United States knew or should have reasonably known through federal employees at the U S Department of Labor and the Turner Jobs Corps Center, that Obadiah Windom suffered from a preexisting heart condition and medical history that warranted a medical examination by a physician as prescribed by DOL policies and procedures prior to his participation in the Center's programs and activities
- 25 That the United States through federal employees at the U.S. Department of Labor and the Turner Jobs Corps Center breached this duty of care owed to Obadiah Windom by failing to adequately supervise, maintain and enforce DOL policies and procedures that entitled Obadiah Windom to a physician's medical examination of his heart condition prior to his participation in the Center's programs and activities
- 26 That Obadiah Windom's death was a direct result of this breach of duty

27 That the Plaintiffs are entitled to recovery money damages as the parents and next of kin of Obadiah Windom, against the United States, for actual and compensatory damages resulting from the negligence of federal employees at the U S Department of Labor and the Turner Jobs Corps Center in Albany, Georgia.

WHEREFORE, the Plaintiffs pray for the following relief

- 1 A jury trial on all triable issues.
- 2 An award of money damages for actual and compensatory damages as determined by a jury in accordance with the governing law;
- 3 Post and pre-judgment interests as allowable under the law; and
- 4 Any other relief that the Court determines to be just and equitable under the circumstances

Respectfully submitted on this 4 day of October, 2006.



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